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6 IN THE UNITED STATES DISTRICT COURT FOR THE  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 GARRICK HERRINGTON, )  
10 )  
11 Plaintiff, )  
12 vs. )  
13 )  
14 A.K. SCRIBNER, et al., )  
15 Defendants. )  
16 )  
17

No. CV-F-05-624 OWW/GSA  
MEMORANDUM DECISION AND  
ORDER RE PLAINTIFF'S MOTION  
FOR RECONSIDERATION BY  
DISTRICT JUDGE OF MAGISTRATE  
JUDGE'S ORDER (Doc. 57)

18 Plaintiff, proceeding *in pro per*, has timely filed a motion  
19 for reconsideration of the Magistrate Judge's March 12, 2009  
20 Order.

21 Pursuant to Rule 72-303, Local Rules of Practice, a District  
22 Judge upholds a Magistrate Judge's ruling on a referred matter  
23 unless it is "clearly erroneous or contrary to law." See Rule  
24 72(a), Federal Rules of Civil Procedure; 28 U.S.C. §  
25 636(b)(1)(A). The "clearly erroneous" standard applies to a  
26 Magistrate Judge's findings of fact. *Concrete Pipe & Prods. v.*

1 *Constr. Laborers Pension Trust*, 508 U.S. 602, 623 (1993). "A  
2 findings is 'clearly erroneous' when although there is evidence  
3 to support it, the reviewing [body] on the entire evidence is  
4 left with the definite and firm conviction that a mistake has  
5 been committed." *Id.* at 622. The "contrary to law" standard  
6 allows independent, plenary review of purely legal determinations  
7 by the Magistrate Judge. *FDIC v. Fidelity & Deposit Co. of Md.*,  
8 196 F.R.D. 375, 378 (S.D.Cal.2000); *Haines v. Liggett Group,*  
9 *Inc.*, 975 F.2d 81, 91 (3<sup>rd</sup> Cir.1992). "An order is contrary to  
10 law when it fails to apply or misapplies relevant statutes, case  
11 law, or rules of procedure." *DeFazio v. Wallis*, 459 F.Supp.2d  
12 159, 163 (E.D.N.Y.2006).

13 Plaintiff makes no showing that the March 12, 2009 Order is  
14 either clearly erroneous or contrary to law. The Order was  
15 within the discretion of the Magistrate Judge and he did not  
16 abuse that discretion.

17 IT IS SO ORDERED.

18 Dated: April 3, 2009

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE